the opinion of many of the courts; the woman's side of the question is ably presented in *Warren* v. *Warren*, 89 Mich. 123.

It will be noticed that a parity or reasoning would deny such an action to the husband also, and the Maine Court intimates very consistently, that such is their opinion. But there is absolutely no authority for such a view which seems wholly indefensible. In the husband's case it is clear that divorce would be a totally inadequate and undesirable remedy. Even where the conduct of the wife would be sufficient grounds for separation — which is improbable, even in many cases where the husband has suffered substantial damage — we have the extraordinary result that the sole resource of an injured husband is to put himself into a position where a second injury is impossible, no matter how undesirable to him such a change may be, — the wife bears the whole burden of the wrong, and the true wrongdoer escaping absolutely free! It may be well doubted if any court of to-day would reach such a conclusion. But these reasons apply equally, though perhaps not so strongly, to the woman's case. And this discrimination between the husband and the wife, wholly unjust and contrary to the spirit of all our recent legislation, should fall now with the technical reasons for its existence.

DEFENCES IN STATUTORY CRIMES. — It is a disputed question whether the common law ingredient of intent is necessary in a crime, the origin of which is purely statutory. That each criminal enactment is a direct repeal of the common law on its particular subject, and that the offence is complete if the bare words of the statute are satisfied, is one prevailing view. Another theory is that such legislative interference is not a repeal, but merely a modification of the common law to the extent of the words of the enactment. All defences, then, which were good before it was passed are to be regarded as still effectual, unless the words of the statute expressly negative their application. Between these two extreme views there is a middle one which commends itself as a convenient rule. To certain offences, such as police regulations, in their nature mere torts against the State, to a conviction of which no moral obloquy attaches, intent may well be considered irrelevant. 12 HARVARD LAW REVIEW, 568. But to the more serious statutory offences justice requires that a defendant may plead successfully all defences not expressly negatived by the legislature. *Regina* v. *Tolson*, 23 Q. B. D. 168. And in such a grave statutory crime as bigamy the defendant should be able, as at common law, to avail himself of a mistake of fact, but by an inflexible rule could take no advantage of a mistake of law.

The Supreme Court of Arkansas have overlooked this view of practical justice in the recent case of *Russell* v. *State*, 49 S. W. Rep. (Ark.). To an indictment for bigamy under the usual statute the defendant pleaded that he acted in the *bona fide* belief that he had been divorced from his first wife. He claimed that he had paid an attorney money to secure a separation, and had received through fraud a void certificate of the annulment of the marriage. The court, in holding that this evidence was properly excluded below, drew no distinction between a mistake of law and a mistake of fact. They evidently went to the extreme of saying that if the words of the statute are satisfied the defendant was guilty. Whether the result they reach is to be commended depends on the ques-

tion whether Russell was laboring under a mistake of fact or one of law. The report is unfortunately too scanty for a clear decision. And the question is perplexing enough when it is noticed that all law from the point of view of its existence is a question of fact. It may be stated generally, however, that if with full knowledge of the facts one is in error as to the true rule of law to be applied, or if, laboring under an erroneous impression that a certain state of facts exist, one is in error as to the true rule of law to be applied to those supposed circumstances, the mistake is one of law. Otherwise it is a mistake of fact. If, then, in the present case the defendant erroneously thought that this certificate of divorce without more was a legal annulment of his marriage by the law of Arkansas, he was certainly to be convicted. If, however, he was led to suppose through fraud that a proper course of legal proceedings had taken place, a pure mistake of fact negativing a criminal intent should have led to his acquittal.

CONSTRUCTIVE MURDER. — It has been accepted generally as a correct rule of law that one attempting to procure an abortion by means of drugs or instruments is guilty of murder if the woman dies as a result of such attempt. The rule is concisely stated in 1 E. P. C. 264, and has been since approved or followed in the English cases. *Rex* v. *Russell*, 1 Moo. C. C. 356; *Reg.* v. *Gaylor*, Dears. & B. C. C. 288. On this side of the water the understanding seems to be substantially the same. *Commonwealth* v. *Keeper of Prison*, 2 Ashm. 227. In *Commonwealth* v. *Parker*, 9 Met. 263, the view is clearly expressed that when an attempt of this kind is made either by administration of drugs or by application of instruments the one making the attempt is guilty of murder if the death of the woman ensues. Nor will the consent of the victim remove the imputation of malice in an act unlawful in purpose and dangerous to life.

In the face of so sound a principle the proceeding of Mr. Justice Darling at the Chester Assizes on March 6th is noteworthy. He had under consideration the facts in the case of one Upton, noted in L. T., March 11th, 1899. The defendant was charged with the murder of a woman whose death was the result of an attempted abortion. The prisoner was clearly within the law, but the Court without questioning the validity of the rule advised the Grand Jury not to return a true bill for murder if they thought that the wound was inflicted by the defendant with the intention only of procuring the abortion and with no intention or desire in any way to effect the death of the woman. The ground on which such directions were justified was dependent wholly upon the previous experience attendant upon convictions of persons for this form of crime. Practice had shown that sentence was passed only to be commuted later by reason of the finding that there was no actual intention to murder.

Whatever may be the outcome of this initiative it is not easy to see just how the circumstances call for an interference with the legislative prerogatives by the judiciary. The rule itself is well grounded in reason according to the principles governing the conduct of criminal prosecutions, and the authorities do not dissent in its application. There seems to be no justification then for the adoption of such means to effect so radical a departure.